IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

Crl.MC.No. 2459 of 2007()

CRIME NO. 421/99 OF TIRUR POLICE STATION
CC.571/2000 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TIRUR

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PETITIONER: 1ST ACCUSED

ASHRAF, S/O. MOHAMMED ALI,
MATHOOR VALAPPIL HOUSE, MANGALAM AMSOM DESOM,
TIRUR TALUK.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS: STATE AND DEFACTO COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
THE STATION HOUSE OFFICER, TIRUR POLICE STATION,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. KARUPPAYIL SIVADASAN, S/O. BALAKRISHNAN,
MANGALAM AMSOM DESOM, CHENNARA, TIRUR TALUK.

R2 BY ADV. SRI.P.M.AMMU
R1 BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2459 of 2007

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Dated this the 8th day of August, 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced for an offence punishable under Section 323 I.P.C. The said verdict of guilty, conviction and sentence has now become final. The petitioner faces a sentence of S.I. for a period of 15 days and to pay a fine of Rs.1,000/- and in default to undergo S.I. for a period of one week. There is a further direction that if the fine amount is realised, the same shall be paid as compensation to the victim/PW1.

2. The petitioner has now come to this Court along with the victim/PW1/R2 herein. The learned counsel for the petitioner submits that the parties have settled their disputes amicably and the second respondent has compounded the offence under Section 323 I.P.C. committed by the petitioner. The second respondent has been adequately compensated also. In these circumstances it is prayed that powers under Section 482 Cr.P.C. may be invoked as explained in the decision in **Sabu George** v. **Home Secretary** (2007 (1) KLT 982) to save the petitioner of the unjust and undeserved trauma of

incarceration in prison even after the compoundable offence is compounded.

3. The petitioner has been found guilty, convicted and sentenced for an offence punishable under Section 323 I.P.C. only. Under Section 320(1) Cr.P.C. the offence is compoundable without the permission of the court. The petitioner and the second respondent have filed a joint application for composition. The application is signed by the accused and the defacto complainant and is counter signed by their respective counsel. The counsel for the second respondent vouches for the signature of the second respondent in the joint application. I am, in these circumstances, convinced beyond doubt that the disputes have been settled and the second respondent has compounded the offence committed by the petitioner/accused.

4. I am satisfied that this is an eminently fit case where the dictum in **Sabu George** deserves to be invoked to save the petitioner of the unjust consequence of incarceration in prison, notwithstanding the composition of the offence.

5. Notice was given to the learned Prosecutor. He does not raise any objection.

6. This Crl.M.C. is accordingly allowed. The substantive sentence of imprisonment for 15 days and the sentence of fine of Rs.1,000/- and the default sentence of one week imposed on the petitioner, it is directed, need not be executed in the light of the subsequent composition of the offence under Section 323 I.P.C.

7. Issue copy of the order to the learned counsel for the petitioner for production before the learned Magistrate.

(R. BASANT)
Judge

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